

AMENDED IN SENATE AUGUST 12, 2002
AMENDED IN ASSEMBLY MARCH 20, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1916

Introduced by Assembly Member Matthews

(Principal coauthor: Senator Ortiz)

(Coauthors: Assembly Members Alquist, John Campbell, Cedillo, Cohn, Dickerson, Harman, Koretz, Longville, Negrete McLeod, Pescetti, Richman, Salinas, and Strickland)

(Coauthors: Senators Kuehl, Machado, Margett, and Speier)

February 8, 2002

An act to amend, *repeal*, and *add* Section 6369 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1916, as amended, Matthews. Sales and use taxes: exemptions: medicines: lancets and blood glucose strips used in the treatment of diabetes.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for specified products, used in the treatment of diabetes, that are furnished by a registered pharmacist as directed by a physician.

This bill would, *until January 1, 2008*, expand this exemption to also include lancets and blood glucose strips furnished for the treatment of

diabetes, and would remove the requirement that the exempt products, as expanded by this bill, be furnished by a registered pharmacist.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6369 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6369. (a) There are exempted from the taxes imposed by this
- 4 part the gross receipts from the sale in this state of, and the storage,
- 5 use, or other consumption in this state of, medicines:
- 6 (1) Prescribed for the treatment of a human being by a person
- 7 authorized to prescribe the medicines, and dispensed on
- 8 prescription filled by a registered pharmacist in accordance with
- 9 law.
- 10 (2) Furnished by a licensed physician and surgeon, dentist, or
- 11 podiatrist to his or her own patient for treatment of the patient.
- 12 (3) Furnished by a health facility for treatment of any person
- 13 pursuant to the order of a licensed physician and surgeon, dentist,
- 14 or podiatrist.
- 15 (4) Sold to a licensed physician and surgeon, podiatrist, dentist,
- 16 or health facility for the treatment of a human being.
- 17 (5) Sold to this state or any political subdivision or municipal
- 18 corporation thereof, for use in the treatment of a human being; or
- 19 furnished for the treatment of a human being by a medical facility



1 or clinic maintained by this state or any political subdivision or
2 municipal corporation thereof.

3 (6) Furnished without charge by a pharmaceutical
4 manufacturer or distributor to a licensed physician, surgeon,
5 dentist, podiatrist, or health facility for the treatment of a human
6 being, or furnished by a pharmaceutical manufacturer or
7 distributor without charge to an institution of higher education for
8 instruction or research, provided that the exemption provided in
9 this paragraph is limited to medicines of a type that can be
10 dispensed only (A) for the treatment of a human being and (B)
11 pursuant to prescriptions issued by persons authorized to prescribe
12 medicines. The exemption provided in this paragraph shall include
13 the materials used to package, and the constituent elements and
14 ingredients used to produce, the medicines described in this
15 paragraph and is intended to preclude any imposition of tax
16 pursuant to Section 6094 or 6095 with respect to those materials,
17 elements, and ingredients.

18 (b) “Medicines” as used in this section, means any substance
19 or preparation intended for use by external or internal application
20 to the human body in the diagnosis, cure, mitigation, treatment, or
21 prevention of disease and commonly recognized as a substance or
22 preparation intended for that use. However, “medicines” does not
23 include any of the following:

24 (1) Any auditory, prosthetic, ophthalmic, or ocular device or
25 appliance.

26 (2) Articles that are in the nature of splints, bandages, pads,
27 compresses, supports, dressings, instruments, apparatus,
28 contrivances, appliances, devices, or other mechanical, electronic,
29 optical, or physical equipment or article or the component parts
30 and accessories thereof.

31 (3) Any alcoholic beverage the manufacture, sale, purchase,
32 possession, or transportation of which is licensed and regulated by
33 the Alcoholic Beverage Control Act (Division 9 (commencing
34 with Section 23000) of the Business and Professions Code).

35 (c) Notwithstanding subdivision (b), “medicines” as used in
36 this section means and includes any of the following:

37 (1) Sutures, whether or not permanently implanted.

38 (2) Bone screws, bone pins, pacemakers, and other articles,
39 other than dentures, permanently implanted in the human body to

1 assist the functioning of any natural organ, artery, vein, or limb and
2 that remain or dissolve in the body.

3 (3) (A) Orthotic devices, other than orthodontic devices,
4 designed to be worn on the person of the user as a brace, support,
5 or correction for the body structure, and replacement parts for
6 these devices. However, orthopedic shoes and supportive devices
7 for the foot are not exempt unless they are custom-made
8 biomechanical foot orthoses or are an integral part of a leg brace
9 or artificial leg.

10 (B) For purposes of this paragraph, “custom-made
11 biomechanical foot orthoses” means an individually prescribed
12 foot orthosis that is custom fabricated over a neutral or near neutral
13 subtalar joint with a pronated midtarsal joint position positive
14 plaster model of the patient’s foot, which model, when the cast is
15 modified to support the osseous position of the forefoot in
16 relationship to the rearfoot, embodies the angular osseous
17 relationships of the anterior and posterior portions of the foot.

18 (4) Prosthetic devices, and replacement parts for those devices,
19 designed to be worn on or in the person of the user to replace or
20 assist the functioning of a natural part of the human body, other
21 than auditory, ophthalmic, and ocular devices or appliances, and
22 other than dentures, removable or fixed bridges, crowns, caps,
23 inlays, artificial teeth, and other dental prosthetic materials and
24 devices.

25 (5) Artificial limbs and eyes, or their replacement parts, for
26 human beings.

27 (6) Programmable drug infusion devices to be worn on or
28 implanted in the human body.

29 (d) “Health facility” as used in this section has the meaning
30 ascribed to it in Section 1250 of the Health and Safety Code, and
31 also includes any “clinic” as defined in Section 1200 of the Health
32 and Safety Code.

33 (e) Insulin, lancets, blood glucose strips, and insulin syringes
34 furnished, whether by a registered pharmacist or not, to a person
35 for the treatment of diabetes as directed by a physician, shall be
36 deemed to be dispensed on prescription within the meaning of this
37 section.

38 (f) Orthotic and prosthetic devices, and replacement parts for
39 these devices, furnished pursuant to the written order of a
40 physician or podiatrist, shall be deemed to be dispensed on



1 prescription within the meaning of paragraph (1) of subdivision
2 (a), whether or not the devices are furnished by a registered
3 pharmacist.

4 (g) Mammary prostheses, and any appliances and related
5 supplies necessary as the result of any surgical procedure by which
6 an artificial opening is created in the human body for the
7 elimination of natural waste, shall be deemed to be dispensed on
8 prescription within the meaning of this section.

9 (h) *This section shall become inoperative and is repealed on*
10 *January 1, 2008.*

11 *SEC. 2. Section 6369 is added to the Revenue and Taxation*
12 *Code, to read:*

13 *6369. (a) There are exempted from the taxes imposed by this*
14 *part the gross receipts from the sale in this state of, and the storage,*
15 *use, or other consumption in this state of, medicines:*

16 *(1) Prescribed for the treatment of a human being by a person*
17 *authorized to prescribe the medicines, and dispensed on*
18 *prescription filled by a registered pharmacist in accordance with*
19 *law.*

20 *(2) Furnished by a licensed physician and surgeon, dentist, or*
21 *podiatrist to his or her own patient for treatment of the patient.*

22 *(3) Furnished by a health facility for treatment of any person*
23 *pursuant to the order of a licensed physician and surgeon, dentist,*
24 *or podiatrist.*

25 *(4) Sold to a licensed physician and surgeon, podiatrist,*
26 *dentist, or health facility for the treatment of a human being.*

27 *(5) Sold to this state or any political subdivision or municipal*
28 *corporation thereof, for use in the treatment of a human being; or*
29 *furnished for the treatment of a human being by a medical facility*
30 *or clinic maintained by this state or any political subdivision or*
31 *municipal corporation thereof.*

32 *(6) Furnished without charge by a pharmaceutical*
33 *manufacturer or distributor to a licensed physician, surgeon,*
34 *dentist, podiatrist, or health facility for the treatment of a human*
35 *being, or furnished by a pharmaceutical manufacturer or*
36 *distributor without charge to an institution of higher education for*
37 *instruction or research, provided that the exemption provided in*
38 *this paragraph is limited to medicines of a type that can be*
39 *dispensed only (A) for the treatment of a human being and (B)*
40 *pursuant to prescriptions issued by persons authorized to*

1 *prescribe medicines. The exemption provided in this paragraph*
2 *shall include the materials used to package, and the constituent*
3 *elements and ingredients used to produce, the medicines described*
4 *in this paragraph and is intended to preclude any imposition of tax*
5 *pursuant to Section 6094 or 6095 with respect to those materials,*
6 *elements, and ingredients.*

7 *(b) “Medicines” as used in this section, means any substance*
8 *or preparation intended for use by external or internal application*
9 *to the human body in the diagnosis, cure, mitigation, treatment, or*
10 *prevention of disease and commonly recognized as a substance or*
11 *preparation intended for that use. However, “medicines” does not*
12 *include any of the following:*

13 *(1) Any auditory, prosthetic, ophthalmic, or ocular device or*
14 *appliance.*

15 *(2) Articles that are in the nature of splints, bandages, pads,*
16 *compresses, supports, dressings, instruments, apparatus,*
17 *contrivances, appliances, devices, or other mechanical,*
18 *electronic, optical, or physical equipment or article or the*
19 *component parts and accessories thereof.*

20 *(3) Any alcoholic beverage the manufacture, sale, purchase,*
21 *possession, or transportation of which is licensed and regulated by*
22 *the Alcoholic Beverage Control Act (Division 9 (commencing with*
23 *Section 23000) of the Business and Professions Code).*

24 *(c) Notwithstanding subdivision (b), “medicines” as used in*
25 *this section means and includes any of the following:*

26 *(1) Sutures, whether or not permanently implanted.*

27 *(2) Bone screws, bone pins, pacemakers, and other articles,*
28 *other than dentures, permanently implanted in the human body to*
29 *assist the functioning of any natural organ, artery, vein, or limb*
30 *and that remain or dissolve in the body.*

31 *(3) (A) Orthotic devices, other than orthodontic devices,*
32 *designed to be worn on the person of the user as a brace, support,*
33 *or correction for the body structure, and replacement parts for*
34 *these devices. However, orthopedic shoes and supportive devices*
35 *for the foot are not exempt unless they are custom-made*
36 *biomechanical foot orthoses or are an integral part of a leg brace*
37 *or artificial leg.*

38 *(B) For purposes of this paragraph, “custom-made*
39 *biomechanical foot orthoses” means an individually prescribed*
40 *foot orthosis that is custom fabricated over a neutral or near*

1 *neutral subtalar joint with a pronated midtarsal joint position*
2 *positive plaster model of the patient's foot, which model, when the*
3 *cast is modified to support the osseous position of the forefoot in*
4 *relationship to the rearfoot, embodies the angular osseous*
5 *relationships of the anterior and posterior portions of the foot.*

6 (4) *Prosthetic devices, and replacement parts for those devices,*
7 *designed to be worn on or in the person of the user to replace or*
8 *assist the functioning of a natural part of the human body, other*
9 *than auditory, ophthalmic, and ocular devices or appliances, and*
10 *other than dentures, removable or fixed bridges, crowns, caps,*
11 *inlays, artificial teeth, and other dental prosthetic materials and*
12 *devices.*

13 (5) *Artificial limbs and eyes, or their replacement parts, for*
14 *human beings.*

15 (6) *Programmable drug infusion devices to be worn on or*
16 *implanted in the human body.*

17 (d) *"Health facility" as used in this section has the meaning*
18 *ascribed to it in Section 1250 of the Health and Safety Code, and*
19 *also includes any "clinic" as defined in Section 1200 of the Health*
20 *and Safety Code.*

21 (e) *Insulin and insulin syringes furnished by a registered*
22 *pharmacist to a person for treatment of diabetes as directed by a*
23 *physician shall be deemed to be dispensed on prescription within*
24 *the meaning of this section.*

25 (f) *Orthotic and prosthetic devices, and replacement parts for*
26 *these devices, furnished pursuant to the written order of a*
27 *physician or podiatrist, shall be deemed to be dispensed on*
28 *prescription within the meaning of paragraph (1) of subdivision*
29 *(a), whether or not the devices are furnished by a registered*
30 *pharmacist.*

31 (g) *Mammary prostheses, and any appliances and related*
32 *supplies necessary as the result of any surgical procedure by which*
33 *an artificial opening is created in the human body for the*
34 *elimination of natural waste, shall be deemed to be dispensed on*
35 *prescription within the meaning of this section.*

36 (h) *This section shall become operative on January 1, 2008.*

37 ~~SEC. 2.—~~

38 SEC. 3. *Notwithstanding Section 2230 of the Revenue and*
39 *Taxation Code, no appropriation is made by this act and the state*

1 shall not reimburse any local agency for any sales and use tax
2 revenues lost by it under this act.

3 ~~SEC. 3.—~~

4 *SEC. 4.* This act provides for a tax levy within the meaning
5 of Article IV of the Constitution and shall go into immediate
6 effect. However, the provisions of this act shall become operative
7 on the first day of the first calendar quarter commencing more than
8 90 days after the effective date of this act.

